Amendments to the Drawings:

The attached two (2) sheets of drawing includes changes to Fig. 1 and Fig. 6. The sheet for Fig. 1, which includes Figs. 1, 2 and 4, replaces the original sheet. In Fig. 1, tabs are denoted "108" and element "14b" has been revised to element "14f". The sheet for Fig. 6, which includes Figs. 5-8, replaces the original sheet. In Fig. 6, previously omitted element "14d" has been added. Also, attached are two annotated sheets of drawings shown the changes made to Figs. 1 and 6.

Attachment: Two (2) Replacement Sheets
Two (2) Annotated Sheets Showing Changes

REMARKS/ARGUMENTS

Claims 1-25 are pending in this application wherein claims 1, 9 and 17 are in independent format. In this Office Action response, the specification, the drawings and claims 1, 6, 7, 9, 10, 17, 24 and 25 have been amended and claims 5 and 23 have been cancelled.

Mr. Azzarello has reviewed the Examiner's arguments for the rejection of claims 1-25. However, in view of the arguments and claim amendments, he considers these grounds of rejection to be moot.

Objection to the Drawings

The Examiner objected to the drawings because the subject matter to claims 6, 9 and 25 are allegedly not clearly disclosed in the drawings. The Examiner contends that the upper end ring's flange wherein the flange prevents the bail from returning to its original position is not clearly disclosed in the drawings. Fig. 3B clearly discloses the upper ends ring's flange as "15f". As such, Fig. 3B is not being re-submitted. Applicant is submitting new Fig. 1 wherein new Fig. 1 denotes the tabs as "108" and element "14b" has been revised to element "14f". Applicant is submitting new Fig. 6 wherein new Fig. 6 denotes the channel as "14d".

Rejection Under 35 U.S.C. 112

The Examiner rejected claims 6, 7, 8, 9-16 and 25 under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement paragraph. The Examiner contends that the flange-bail-tab interface is not clearly disclosed in the drawings or specification. Fig. 3B discloses the flange 15f, bail 14 and tab 108.

As noted in the specification on pages 9 and 10, the tabs 108 break from the sidewall 12 of the container when the bail 14 moves upwardly from a horizontal position to a vertical position. When the bail 14 moves upwardly, the tabs 108 bias or "snap" against flange 15f when the tabs pass the flange. When the bail 14 moves from the vertical position back to the horizontal position, the tabs 108 again snap past flange 15f. As such, the flange 15f prevents the bail 14 from springing back to the vertical position and interfering with paint brush access to the top opening of container once the tabs 108 are snapped downward past the flange. Fig. 3B illustrates the flange-tab-bail

configuration showing the tab 108 positioned below the flange 15f (i.e., the bail 14 is positioned in the horizontal position). Withdrawal of the rejection is respectfully requested.

The Examiner rejected claims 1-8, 10-16, 18 and 19 under 35 U.S.C. 112, second paragraph, as allegedly failing to comply with the enablement paragraph. The Examiner contends that how the container does not tip when full, while being lifted, is unclear. Fig. 5 discloses the orientation of the container when full (solid lines) and the orientation when the container is less than full (segmented lines). As noted on page 7 of the specification, the geometry of the bail's cross section and offset of the attachment bosses enable the container to sit properly (i.e., not tilt) when the container is suspended and full. As the container is emptied, the container starts tilting which exposes more of the top opening so a paint brush can enter more easily (without bail interferences) as the brush needs to go deeper. Applicant respectfully submits that the disclosure is enabling with respect to these claims. Withdrawal of the of the rejection is thus respectfully requested.

Rejection Under 35 U.S.C. 102(b)

The Examiner rejected claims 1-3, 6, 9-11, 17-19 and 25 under 35 U.S.C. 102(b) as being allegedly anticipated by *Drogos* (U.S. Patent No. 5,027,973) (hereinafter "the *Drogos* reference").

A prima facie case of anticipation is established when the Examiner provides a single reference that teaches or enables each of the claimed elements (arranged as in the claim) expressly or inherently as interpreted by one of ordinary skill in the art. In the present application, the Applicant submits that a prima facie case of anticipation has not been established. Applicant submits that claims 1, 9 and 17 and the respective dependent claims particularly point out and distinctly claim his invention, and that his invention is neither taught nor suggested by the cited reference.

The Examiner states that, in the *Drogos* reference, the boss spacing is less than 180°, and in particular referring to Fig. 7, states the boss spacing being 140° apart. Based on Mr. Azzarello's calculations, the boss spacing of the *Drogos* reference is 176°. This calculation is based on how those skilled in the art make boss angular measurements. The angular measurement is made from the edge of the boss where the bail connects to

the boss to the bail connection counterpart on the other side of the container. The angular measurement is not made to the center of the boss or any other point. Amended claim 1 recites the bosses being less than 170° apart. As such, the *Drogos* reference does not anticipate amended claim 1 since the *Drogos* reference teaches an angular measurement of 176°.

Additionally, the Examiner states that the thickness of the bail of the *Drogos* reference being substantially uniform throughout as shown in Fig. 7. In Fig. 7, the bail is positioned in the horizontal position, which shows a plan view of the sidewall of the bail. Amended claims 9 and 17 recite that the thickness of the base of the bail is uniform. This base is the width of the sidewalls of the bail.

The *Drogos* reference discloses that the transition element 32:

> "...may be larger in cross-section than the manually graspable portion of the bail, as shown, or it may be of any appropriate thickness which provides the necessary strength. The flexible portion 34 abuts the transition member 32 and is formed with an arcuate underside 35 which gives the flexible portion a variable thickness which is at its thinnest near the middle of its length. In the preferred embodiment of FIGS. 7 and 8, the cross-sectional configuration of the bail changes from generally rectangular at the location of the hinge portions 33 to generally circular at its central portion 31, the change in cross-section occurring in the transition segment 32.
>
> As best seen in FIG. 6, when the bail is lifted into an upright position, the thin, flexible portion 34 presents an area of preferred sharp bending..." (*See*: Column 3, lines 25-37, Figs. 2 and 6.)

Accordingly, the *Drogos* reference has a non-uniform base along the length of the bail and does not teach a base having a uniform thickness. As such, the *Drogos* reference does not anticipate amended claims 9 and 17.

Furthermore, the Examiner states that element 36 of Figs. 3 and 7 comprises the boss for the *Drogos* reference. (*See*: Non-final Office Action p. 4, last paragraph, p. 6, paragraph 2, p. 7, paragraph 3, p. 8, paragraphs 2, 3 and 4.) The Examiner also contends that element 36 of Fig. 2 comprises a tab as taught by the present application. (*See*: p. 5,

paragraph 2.) Rather, the specification and drawings of *Drogos* make clear element 36 is a boss, not a tab.

The Examiner also states that Column 1, lines 26-28 of the *Drogos* reference teaches tabs which break from the container. This summary portion of the *Drogos* reference, however, teaches hinges of the bail wherein the hinges are defined as element 33 in the *Drogos* reference. These hinges 33 are not tabs, as set forth in claims 6, 9, 17 and 25, and do not break from the container. In *Drogos*, the bail moves between the horizontal and vertical positions without contacting the support bead of the container or biasing against the support bead of the container as set forth in claims 6, 9 and 25. (*See*: Figs. 3 and 7 and column 3, lines 53-58 – "the end of each boss 36 is wider than the hinge portion so that the boss extends from the outer edge of the bail to the support bead to provide a space between the boss and the support bead, insuring that the boss is freely pivotable upwardly and downwardly about the hinge portions.")(Emphasis added).

In contrast, in the present application, amended claim 9 recites:

> "...wherein the tabs bias against the flange in order to extend past the flange when the bail is lifted to a vertical position and wherein the tabs bias against the flange in order to extend past the flange when the bail is returned to a horizontal position."

During movement between the horizontal and vertical position, the bail of the present application contacts the container body via the connected tabs. As noted, the bail as taught by the *Drogos* reference is free from contacting the container. As such, the *Drogos* reference does not anticipate amended claim 9.

Dependent claims, by their nature, include all of the limitations of the parent independent claim and any intervening claims from which they depend. Claims 2-8, 10-16 and 18-25 depend directly or indirectly from independent claims 1, 9 and 17 respectively, and accordingly, are believed allowable under 35 U.S.C. § 102 (b) over the *Drogos* reference, for at least the same reasons as independent claims 1, 9 and 17.

Rejection Under 35 U.S.C. 103(a)

The Examiner rejected claims 4, 5, 12-16 and 20-24 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Schaper* et al. (U.S. Patent No.

6,443,325) (the "*Schaper*" reference). The Examiner rejected claim 7 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Gall* (U.S. Patent No. 4,357,042) (the "*Gall* reference"). The Examiner rejected claim 8 under 35 U.S.C. 103(a) as being allegedly unpatentable over *Drogos* in view of *Gall* in further view of *Letica* (U.S. Patent No. 5,875,913) (the "*Letica* reference").

Dependent claims, by their nature, include all of the limitations of the parent independent claim and any intervening claims from which they depend. Claims 4, 5, 12-16 and 20-24 depend directly or indirectly from independent claims 1, 9 and 17, and accordingly, are believed allowable, for at least the same previous reasons as independent claims 1, 9 and 17.

Without acquiescing the allow ability of 4, 5, 7, 8, 12-16 and 20-24 based on their respective allowed independent claims, Applicant states that, under M.P.E.P. § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation for success. Finally, the prior art reference (or references when combined) must teach or suggest all the claimed limitations.

The Applicant submits that it is improper to combine the references where the references teach away from their combination. (*See*: M.P.E.P. § 2145 X.D.2). Furthermore, if the prior art references require some modification in order to meet the claimed invention or requires some modification in order to be properly combined with another reference and such modification destroys the purpose or function of the invention disclosed in the reference, one of ordinary skill in the art would not have found a reason to make the claimed invention. (*See*: M.P.E.P. § 2143.01). (Emphasis added). In other words, the proposed modification cannot render the prior art unsatisfactory for its intended purpose.

As noted, the *Drogos* reference has a non-uniform base along the length of the bail and does not teach a base having a uniform thickness. Additionally, the *Drogos* reference teaches hinges of the bail wherein the hinges do not break from the container.

In *Drogos*, the bail moves between the horizontal and vertical positions without contacting the support bead of the container or biasing against the support bead of the container. (*See*: Figs. 3 and 7 and column 3, lines 53-58).

The Examiner contends that the *Schaper* reference teaches that the cross section of the handle transforms from a channel shape to flattened shape at a point substantially equidistant from the bosses on the side of the container body (Fig. 4) and illustrates the flattened shape (Fig. 3b). The Applicant respectfully submits that the *Schaper* reference does not teach, in Fig. 4, that the cross section of the handle transforms from a channel shape to a flattened shape at equidistant points from the container interface. Fig. 4 illustrates a side view of the bail taught by *Schaper* wherein this U-shaped cross section tapers to webs at the end portions of the handle for forming living hinges at the container interface. (*See*: Column 3, lines 32-35, 42-44). Further, Fig. 3b of the *Schaper* reference clearly discloses a U-shaped channel and does not disclose a flat section. In contrast, the present application teaches that the channel shape transforms to the flat section at equidistant points away from the container interface. Additionally, the *Schaper* reference teaches a bail having a non-uniform base as shown in Figs. 1, 2 and 4.

As noted in the present application, the uniform thickness of the channel section and flat section provides constant mold cooling and uniform heat distribution (*See:* p. 8, lines 7-8). Furthermore, in the present application, there are no regions of reduced thickness such as would be found were the bail to incorporate a living hinge at each end of the bail. (*See*: p. 8, lines 11-12).

The non-uniform thickness of the bail and the hinge configuration of the bail-container interface as taught by the *Drogos* reference and the *Schaper* reference teach away from the present application. Thus, the *Drogos* and *Schaper* references, alone or in combination, fail to provide any motivation or suggestion for a person skilled in the art to modify or combine the reference teachings. Further, these references, alone or in combination, do not teach or suggest all the claim limitations. Modifying the references to meet the claimed invention would destroy the purpose or function of the invention disclosed in the references since both the *Drogos* and *Schaper* references teach a non-

uniform base and hinge connections for the bail-container interface. As such, the present application is not obvious in view of the *Drogos* and *Schaper* reference.

Mr. Azzarello incorporates the previous arguments that the present application is not obvious in view of the *Drogos* reference. The Examiner contends that the *Gall* reference teaches a bail wherein the flattened portion extends horizontally when the container is being carried. The Applicant respectfully submits that the *Gall* reference does not teach a flattened portion. As shown in Figs. 1 and 2, portion 21 is disposed substantially along a curved plane such that the bail includes a "twist" at the center of the bail. (*See*: Column 5, lines 7-15). One skilled in the art would not be motivated to replace the channel section of the bail as taught by the *Drogos* reference with the curved section as taught by the *Gall* reference since the curved section teaches away from the flat section. As such, the present application is not obvious in view of any combination of the *Drogos* and *Gall* references. For at least this reason, *Schaper* and *Gall* in combination with *Drogos* do not make obvious the claims of the application.

For at least the foregoing reasons, claims 1-4, 6-22 and 24-25 are believed to be in condition for allowance. Issuance of a Notice of Allowance with respect to the claims is thus respectfully requested. If for any reason the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to contact the undersigned attorney for the purpose of arranging such an interview.

Respectfully submitted.

Dated: 11/11/05

Jonathan P. Soifer Reg. No. 34,932
Polster, Lieder, Woodruff & Lucchesi
12412 Powerscourt Dr.
St. Louis, Missouri 63131
Tel: (314) 238-2400
Fax: (314) 238-2401

Inventor: F. Azzarello Sheet 1 of 2
Docket No.: USCC 8057US
PLASTIC CONTAINER WITH INTEGRAL BAIL
Attorney: Jonathan P. Soifer (314)238-2400
ANNOTATED SHEETS SHOWING CHANGES

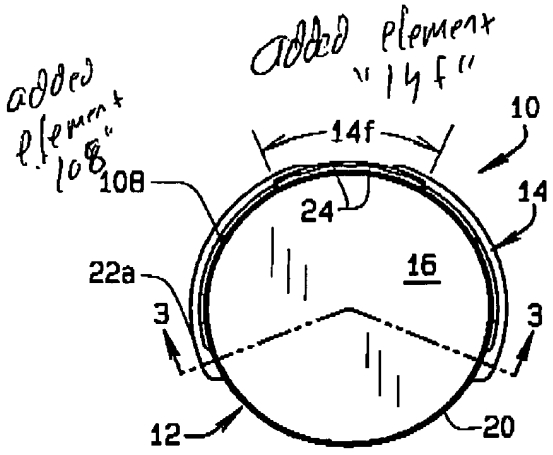

FIG. 1

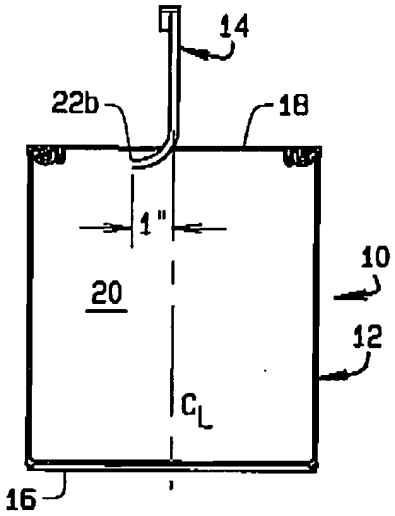

FIG. 2

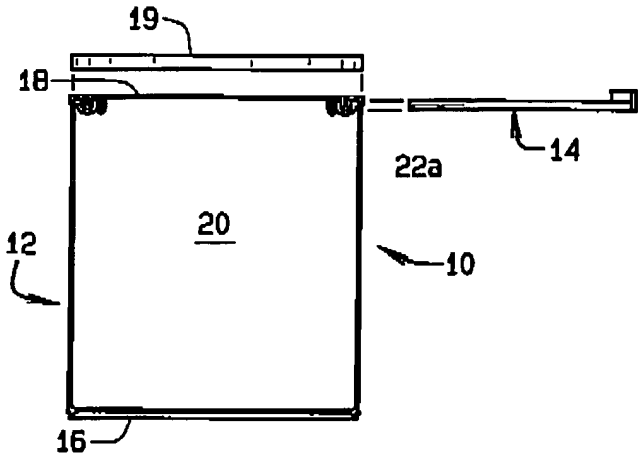

FIG. 4

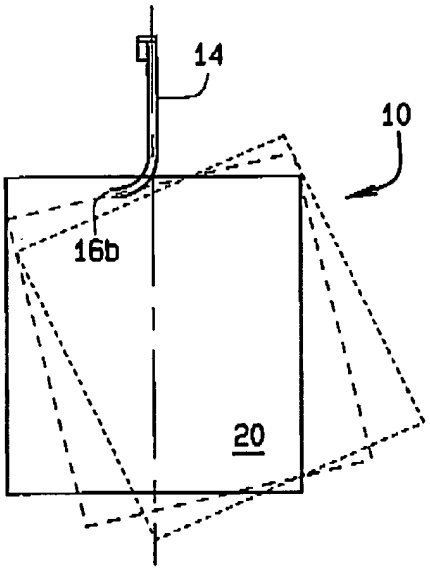

FIG. 5

Added element "14d"

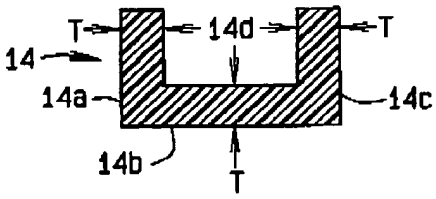

FIG. 6

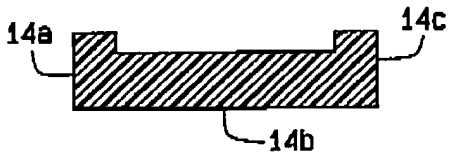

FIG. 7

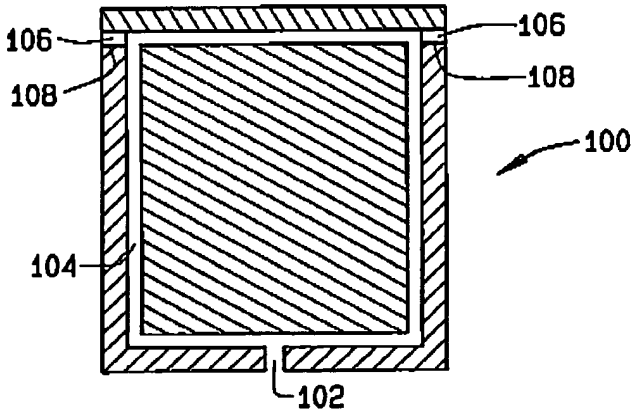

FIG. 8